

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

LAND APPEAL NO. 24 OF 2023

(Originating from Land Application no. 34 of 2021 DLHT, Morogoro)

KILINDIMO M. KILINDIMO APPELLANT

VERSUS

LELA HARUNI 1ST RESPONDENT

ALLY ABDALLAH MKOWE 2ND RESPONDENT

RULING

Date of last order: 28/03/2023

Date of Ruling: 21/04/2023

MALATA, J

In the District Land and Housing Tribunal (DLHT) for Kilosa, the appellant and the second respondent were the respondents while the first respondent was the applicant.

The factual background of this appeal is as follows, the first and the second respondents are husband and wife respectively. That, in 2011 the second respondent loaned from the appellant eight bags of rice to be secured by the plot of land (the land in dispute). Upon the date of payment of the loan the second respondent failed to pay bags of rice as agreed, the second respondent and the appellant entered into another agreement that, the plot of land which secured the loan be the property of the appellant following the failure to pay the loaned sum on time.

In view thereof, in 2012 the appellant started developing the said piece of land by building the house and commercial building. In 2020 the first respondent knocked the doors of DLHT vide application no. 34 of 2020 claiming among other things declaration that she is a lawful owner of the disputed land, the first respondent (the appellant herein) be ordered to vacate from the disputed land, permanent injunction restraining the respondents from using, harassing, threatening and interfering the applicants (respondents) from peaceful use of the disputed land, an order requiring the respondents to pay the applicant Tsh. 5,000,000 as general damages, costs of the suits to be provided for, any other reliefs the tribunal deem fit and just to grant.

After full hearing the DLHT decided in favour of the applicant and grant her the reliefs she prayed for.

The appellant who was the first respondent at the DLHT, was aggrieved by the decision, he lodged the appeal to this court against the decision of the DLHT based on the following grounds;

1. That the Honourable chairman of the DLHT having failed to properly examine, evaluate, analyse the gravity and weight of evidence on record.
2. That the Honourable chairman of the DLHT erred in law and facts for not consider that LELA HARUNI and ALLY ABDALLAH MKOWE are wife and husband both entered into agreement hence they planned to rise the dispute against the appellant in order to defeat the interest of the appellant over the suit premises.
3. That the Honourable chairman of the DLHT erred in law and in facts for not consider the agreement between appellant and second respondent whereby first respondent with their children witnessed and signed such agreement.
4. That the Honourable chairman of the DLHT erred in law and facts by failing to put into consideration that the respondent has no locus to claim over the suit premise.

5. That the Honourable chairman of the DLHT erred in law and facts not to take into consideration that the appellant developed the suit premise for many years and construction the house for settlement as well as three rooms for business and shopping center.
6. That the Honourable chairman of DLHT erred in law and facts for not take into consideration the DLHT assessors' opinion.
7. That the Honourable chairman of DLHT erred in law and facts for issuing defective judgement.

The appellant prayed to this court to quash and set aside the decision of Kilosa DLHT and declare the appellant the lawful owner of the suit premises, any other orders the court deems fit and just to grant and costs for the appeal to be provided to the appellant.

When this appeal was called for hearing on 28th March 2023 the court suo motto raised the issue of time limit within which land application no. 34 of 2020 seeking for declaratory orders before the DLHT and the time limit within which to file this appeal in the High Court.

The appellant unequivocally submitted that, the appeal has to be filed within 45 days from the date of the decision, however the present appeal was filed after 78 days far beyond 45 days prescribed by the law.

Furthermore, application No. application no. 34 of 2020 of the DLHT was also time barred due to the fact that, the cause of action occurred in 2012 vide exhibit RE1 dated **3rd October, 2012** which depict that;

".....Baada ya kushindwa kulipa gunia (8) za mpunga nimeamua kumkabidhi eneo langu liloko mbele ya nyumba yangu.Mimi ndugu Ally Mkoye namkabidhi ndugu Kilindimo wa Kilindimo haki hii ni yake.Anaweza kufanya kitu chochote katika eneo hilo la mbele ya nyumba yangu mimi simdai.Na yeye hanidai. Makubaliano yamefanyika mbele ya....

Witnessed by

- i. Ally Abdallah (2nd Respondent herein and husband of 1st respondent)*
- ii.*
- iii. Leila Harufani (1st respondent herein and wife of 2nd respondent)*
- iv.*
- v.*

and the 1st respondent filed land application no. 34 of 2020 against the appellant herein and 2nd respondent herein claiming for declaratory orders

in particular at paragraph (a) of the prayer to the said land application, the then applicant (the 1st respondent herein) prayed that;

"The tribunal declaration that the applicant is the lawful owner of the disputed land"

However, the respondents herein are husband and wife and in the transaction which led to dispute and case including the appeal before me, the 2nd respondent stood as seller and 1st respondent stood as witness whereas the appellant herein was purchaser. As such, the dispute arose from the development of the land started in 2012 by the appellant herein and in 2020 through land application No.34/2020 the 1st respondent herein filed land application claiming for declaratory order which is eight (8) from the cause of action thus time barred as the same had to be filed within six (6) years. As such, even the appeal before this court is founded on the incompetent proceedings.

The parties were all none lawyers who appeared in court unrepresented thus they had nothing fruitful to submit bearing in mind that, the point at issue were purely on point of law.

In the exercise of powers under section 3(1) of the Law of Limitation Act Cap.89 R.E.2019, the court suo motto raised a point of law is whether

application No. 34 of 2020 seeking declaratory orders was filed within time in DLHT and whether this appeal is also within time.

To start with, the land application no. 34 of 2020 was seeking for declaratory orders against the appellant and the second respondent herein.

The cause of action as per court record is that, it occurred in 2012 via **Exhibit RE1** when the appellant was given land and developed the land by building houses thereon. The first respondent took steps and filed land application No.34 of 2020 seeking for declaratory orders before the DLHT.

In response to the raised issue, this court is guided by the court of appeal decision in the case of **CRDB (1996) LTD v. Boniface Chimya (2003) TLR 413** where it was that;

“Under the act we are clear in our minds that a declaratory decree falls under item 24 in part 1 of the first schedule to the Act. The prescribed period of limitation is six years. From 24th March 1994, when the motor vehicle was seized to 21st July 1996, the time when the suit was instituted, it is a period well within six years prescribed by law. As the basis of the claim was a declaratory order, we think it does not matter whether the relief sought was ancillary or incidental to the substantial relief claim as claimed by Rweyongeza. We think the period of limitation prescribed under the law is the same. viz six

years. We are satisfied that the learned Judge was correct in holding that the limitation period was six years."

This is also supported by item 24 of Part I to the schedule to the Law of Limitation Act Cap. 89 R. E. 2019 which provides that;

"Any suit not otherwise provided for six years"

It is therefore crystal clear that, since the first respondent claimed for declaratory orders in land application No 34 of 2020 as such, she ought to have filed the same within six (6) years based on the above principle.

Counting from 2012 when the cause of action arose to 2020 when land application No.34 of 2020 was filed by the 1st respondent in DLHT seeking for declaratory orders, it is clear eight (8) years had passed which is far beyond the time limit within which to file case seeking for declaratory orders.

Based on the principles in the CRDB case and item 24 of Part I to the schedule to the Law of Limitation Act, Cap.89 R.E.2019, it is with no malingering of doubt that, the Land application No.34 of 2020 was filed beyond time limit prescribed by law.

As such, this appeal is rooted from incompetent proceeding as it arose from a nullity. This court cannot legally condone and continue to act on a nullity proceeding.

The remaining question is, what is the fate of the appeal arising from the proceedings filed outside the prescribed time limit by the law.

The answer to above posed question is found in the court of appeal decision in **Ali Shabani and 48 others vs. Tanroads and Attorney General**, Civil Appeal no. 261 of 2020 (unreported), where the court held that, as the suit was time barred, the only order was to dismiss it under Section 3(1) of The Law of Limitation Act.

Section 3(1) of the Law of Limitation Act states that;

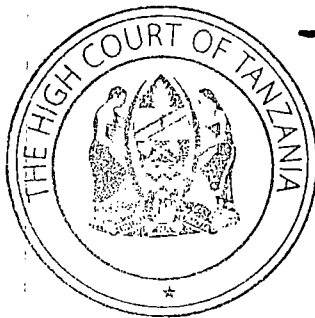
*"3(1) Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and to which is instituted after the period of limitation prescribed thereof opposite thereto in the second **column shall be dismissed whether or not limitation has been set up as a defence.**"*

Other authorities laying down the same principle includes but not limited to the case **Halima S. Sukuzi vs. Sihaba Nassoro**, Land Appeal no. 141 of 2016 (unreported), **Sarbjit Singh Bharya and another vs. NIC Bank Tanzania LTD and another**, Civil Appeal no. 94 of 2017, CAT (unreported), **Hezron M. Nyachiya vs. Tanzania Union of Industrial and Commercial Workers and another**, Civil Appeal no. 79 of 2011, CAT (unreported).

As this point of law was raised by this court *suo motto*, I order that each to party to bear its own costs.

IT IS SO ORDERED.

DATED at MOROGORO this 21st April 2023.




G. P. MALATA

JUDGE

21/04/2023